

Appl. No. : 10/085,169
Filed : February 25, 2002

REMARKS

In response to the Office Action mailed September 15, 2004, Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments. As a result of the amendments listed above, Claims 1-3, 5-8, 11 and 12 remain pending. Claims 1 and 5 have been amended. Claims 4, 9 and 10 were canceled by a previous amendment.

In the changes made by the current amendment, ~~deletions are shown by strikethrough~~, and additions are underlined.

Claims 1-3, 5-8, 11 and 12 Are Allowable Over The Prior Art Of Record

Claims 1, 2 and 5 presently stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lampropoulos et al. Claim 3 presently stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lampropoulos et al. Claims 6-8, 11 and 12 are indicated as rejected on the summary page of the outstanding office action, but are not specifically addressed within the detailed action section. Applicants respectfully submit that the claims, as amended herein, are allowable over the prior art of record and requests reconsideration and allowance of the present application.

In the outstanding office action, the Examiner has taken the position that Lampropoulos et al. discloses a catheter having a *fixed* cross sectional area of the exit holes of the catheter. The Examiner states that the term "fixed" means securely placed or fastened, i.e., stationary. Thus, the Examiner argues that the exit holes of Lampropoulos et al. are "fixed" when they are in a closed position or when the exit holes are in an open position so long as the area of the holes is not changing.

Applicants respectfully submit that the Merriam-Webster dictionary also defines the term "fixed" as meaning: not subject to change or fluctuation. Clearly, the exit holes of the Lampropoulos et al. catheter are not of a "fixed" size or area because the size or area of the exit holes is configured to change or fluctuate. As recognized by the Examiner, the exit holes of Lampropoulos et al. move between a closed position and an open position. Thus, Applicants respectfully submit that Claims 1 and 5 were allowable in their condition prior to the present amendment.

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However, in an effort to expedite allowance of the present application, Applicants have amended Claims 1 and 5 to recite a catheter including, among other limitations, a plurality of exit holes having a *non-variable* cross-sectional flow area. As discussed above, the exit holes of the Lampropoulos et al. catheter move from a closed position to an open position and, thus, clearly vary in cross-sectional flow area. Accordingly, Applicants respectfully submit that Lampropoulos et al. does not disclose or suggest the catheter of Claims 1 and 5. Furthermore, Applicants submit that the replacing the term "fixed" with the term "non-variable" merely clarifies the intended meaning of the claim, but does not alter its scope.

Applicants respectfully request reconsideration and withdrawal of the present rejection of Claims 1 and 5. Claims 2, 3, 6-8, 11 and 12 depend from one of allowable Claims 1 and 5. These claims are allowable not only because they depend from an allowable claim, but upon their own merit as well.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Curtiss C. Dosier at (949) 721-7613 (direct line), to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: DECEMBER 14, 2004

By: 

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